IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.850 of 2002 AND CRL. APPEAL NO.1199 OF 2002

1. Ananthipalayam Velupaiyan
@ Velusamy

2. Kumar @ Muttaikannan .. Appellants in
C.A.Nos.850/2002

Shankar .. Appellant in
C.A.No.1199/2002
-Vs-

State
by Inspector of Police
Karungalpalayam Police Station
Erode Town
(Cr.No.988/2000) .. Respondent in
both appeals

These criminal appeals are preferred under Section 374(2) Cr.P.c. against the judgment of the learned Fast Track Court No.I, Erode in S. C.No.148/2001 dated 6.2.2002.

!For Appellants : Mr.S.Kaithamalai Kumaran
in both appeals.

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate(Crl. side)

:COMMON JUDGMENT

This judgment shall govern both C.A.Nos.850 and 1199 of 2002.
2. The appellants in C.A.No.850 of 2002 ranked as A1 and A5, while the appellant in C.A.No.1199 of 2002 ranked as A4 in a sessions case wherein they along with four others stood charged and tried for the offences under Sections 148, 341, 307 and 307 r/w 149 I.P.C. and the first accused was found guilty under Section 148 and 307 I.P.C. and sentenced to undergo 3 years R.I. under Section 148 I.P.C. and 10 years R.I. along with fine of Rs.1000/- in default 6 months R.I. under Section 307 I.P.C, the fifth accused was found guilty under Sections 148 and 307 r/w 149 I.P.C. and he was sentenced to undergo 3 years R.I under Section 148 I.P.C. and 10 years R.I. along with

fine of Rs.1000/- in default 6 months R.I. under Section 307 r/w 149 I.P.C. and the fourth accused was found guilty under Sections 148 and 307 I.P.C. and sentenced to undergo 3 years R.I. under Section 148 I.P.C. and 10 years R.I. along with fine of Rs.1000/- in default 6 months R.I. under Section 307 I.P.C. have brought forth these appeals.

3. The short facts necessary for the disposal of these appeals can be stated thus:

a) P.W.1, Viji @ Yuvaraj, who was a resident of Alagarasan Nagar, Karungal Palayam, Erode District, was working in a cycle shop near Checkpost, Kaveri Road, which was run by his father P.W.5, Lakshmikanthan. On 13.12.2000 at about 8.00 p.m. when P.W.1 was standing in front of his cycle shop, A1 came in a cycle and asked him to come along with him to talk about the previous incidents. When the same was refused by P.W.1, A1 intimidated him with knife. Due to fear, P.W.1 simply followed A1. When they walked to certain distance, A2 to A7 came with three bicycles and followed P.W.1. A1 instigated all of them to attack P.W.1. A1 was already armed with sword, while the other accused also armed with deadly weapons. A1 to A5 started attacking P.W.1 by saying "eP jhz;lh vq;fs; rutzid bfhd;wha;" . A1 attacked P.W.1 with M.O.1 sword on the backside head of P.W.1. A4 with M.O.2 knife stabbed P.W.1 on his stomach. A3 stabbed P.W.1 with M.O.3 knife on his right side hip. A2 with knife stabbed on back side right shoulder of P.w.1 and A5 with knife M.O.4 attacked P.W.1. However, P.W.1 was able to escape from them. The accused fled away from the scene of occurrence with weapons.

b) P.W.4, Karupannan, an Auto driver, who came to that site, found P.W.1 with grievous injuries, took him to Government Hospital, Erode in his auto and reached the said hospital at about 8.35 p.m.P.W.14 Dr.Karunanithi examined P.W.1 medically and on finding the condition of P.W.1 serious, he informed the same to P.W.13,the Judicial Magistrate-II, Erode for recording Dying Declaration from P.W.1. P.W.14 Doctor intimated the same to the police station. The Accident Register narrating all the injuries found on P.w.1 was marked as Ex.P.15. P.w.15, Vinayagam Head Constable attached to Karungalpalayam Police Station on receipt of information from the Government Hospital, Erode, proceeded to the said hospital at about 9.30 p.m., recorded the statement of P.W.1, which was marked as Ex.P.1 and registered a case in Crime No.988/2000 under Sections 147, 148 and 307 I.P.C. against the accused. The printed F.I.R Ex.P.17 was despatched to the concerned Judicial Magistrate Court. P.W.13 Judicial Magistrate-II Erode, on receipt of information from P.W.14, proceeded to the hospital and recorded Dying Declaration of P.W.1 in front of P.w.14, which was marked under Ex.P.14.

c) P.W.15 on information, on 28.12.2000 at 8.00 p.m. arrested A6 in front of the witnesses and recorded his confessional statement voluntarily made by him. The admissible portion of the said confessional statement was marked as Ex.P.18. Pursuant to the said confessional statement, P.W.15 recovered M.O.6 knife under Ex.P.19 in front of P.W.9 and other witness. A6 was sent for remand. P.w.16, S.T.Rajan, Inspector of Police, Erode North Police Station who was in-charge of Karungalpalayam Police Station took up further investigation. On 9.01.2001 , he filed a petition before the Judicial Magistrate-I, Erode for custody of A3, since he was arrested in connection with other case and detained in Prison. It was accordingly ordered. P.W.16 took the custody of A3 on 11.11.2001 and brought A3 to the concerned Police Station, where A3 volunteered to give a confessional statement and the same

was recorded. The admissible portion of the confessional statement was marked as Ex.P.20. Pursuant to the confessional statement, m.O.7, knife was recovered from A3 under Ex.P.21 mahazar in front of P.Ws.10 and 11. A3 was produced before the Court and was remanded to judicial custody. The properties were sent to Court under Form 95. P.W.16 recorded the statements of P.Ws.10 and 11.

d) P.W.17, S.M.Subramaniam, Inspector of Police, Karungalpalayam Police Station took investigation on 13.12.2000, proceeded to the occurrence place and prepared Ex.P.22, observation mahazar in the presence of witnesses and rough sketch under Ex.P.23. He recorded the statements of witnesses. P.W.17 examined P.Ws.2,3,4,5, and 8 and other witnesses and recorded their statements. On 14.12.2000, P.w.5 produced Bloodstained dhoti worn by P.W.1 at the time of occurrence to P.w.17. On 27.12.2000, P.w.17 filed a petition for custody of A2, A4 and A5 since they surrendered before the court already. Accordingly, the same was ordered. At the time of enquiry, they volunteered to give confessional statement in front of witnesses. Ex.P.24 was the admissible portion of confessional statement made by A2. Pursuant to the confessional statement, he produced M.O.8, Cycle and M.O.9 knife, which was recovered under Ex.P.25, mahazar in front of the witnesses. The confessional statement made by A5 led to the recovery of M.O.7 knife, which was recovered under Ex.P.29 mahazar in front of the witnesses. The accused were sent back to remand and the properties were also produced to Court. P.W.17 examined the witnesses and recorded their statements, who attested Ex.P.24 to Ex.P.30. On 4.2.2001 on information P.W.17 arrested A1 and recorded his voluntary confessional statement. The admissible portion of the same was marked as Ex.P.31. Pursuant to the same, M.O.1 sword and M.O.10 cycle were recovered under Ex.P.32 in front of P.W.12 and other witness. A1 was sent for remand. All the material objects were sent for chemical analysis. On completion of investigation, P.w.17 filed a charge sheet against the accused.

4. In order to prove the charges levelled against the accused, the prosecution has examined 17 witnesses and marked 32 exhibits and 10 M.Os. After completion of the evidence of prosecution, the accused 1 to 7 were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, which they flatly denied as false. No defence witnesses were examined. After careful consideration of the rival submissions made and scrutiny of the materials available, the trial court found the accused 1 to 5 guilty and sentenced them to undergo imprisonment as stated above and acquitted accused 6 and 7. Hence, these appeals have been filed by A1 , A5 and A4.

5. Advancing his arguments for the appellants in both appeals, the learned counsel made the following submissions:

The prosecution, in its attempt to bring home the guilt of the accused, relied on the evidence of P.Ws.1 to 5. According to the prosecution, P.W.1 was an injured and P.Ws.2 and 3 were eyewitnesses. P.W.2 has turned hostile, and hence, except the injured P.W.1, the only testimony that was available was that of P.W.3. A careful scrutiny of the evidence of P.W.3 would clearly indicate that he could not have seen the occurrence at all, since his presence at the time of occurrence was doubtful. Thus, what was available for the prosecution was only an uncorroborated and interested testimony of P.W.1. It is not in dispute that P.W.1 was one of the accused in a case relating to murder of one Saravanan, who was a close friend of the

accused and thus, P.W.1 has falsely implicated the appellants. A5 was not shown as an accused in the F.I.R and no overt act was also attributed to him by P.W.1 in his evidence. Even in the cross examination, P.W.1 has categorically admitted that he knew A1 to A4 and the other three accused were not known to him already. Thus, insofar as A5 is concerned, there was practically no evidence available. The evidence of P.W.14 Doctor also do not support the case of prosecution. According to P.W.14, the first injury was grievous, while all other injuries were simple and superficial. Even assuming the case of the prosecution was proved, it cannot be stated that the accused acted with an intention to cause death of P.W.1 and the same did not attract the provisions under Section 307 I.P.C. All the witnesses examined by the prosecution to prove the confessional statement and the recovery of weapons, have turned hostile. It is also pertinent to point out that the Investigating Officer has examined P.W.1 after five days in the hospital, which casts a clear doubt in his statement and all kinds of embellishment were possible in that interval and to improve the prosecution case also. There were so many discrepancies in the evidence of P.W.1 and P.W.3. Hence, this is a fit case in which the appellants are entitled for acquittal and the judgment of the trial court has got to be set aside.

6. Strongly opposing all the contentions put forth by the appellants' side, the learned Government Advocate in his sincere attempt to sustain the conviction recorded by the trial court has made the following submissions: The prosecution has clearly proved the motive for the occurrence through the evidence of P.W.1. It is not in dispute that there was a case of murder of one Saravanan, where P.W.1 was the accused and the accused persons in the instant case were close friends of the said Saravanan and the same would clearly indicate the reason behind the attack by the accused on P.W.1. P.W.1 has categorically narrated the entire incident. The evidence of P.W.1 has been fully corroborated by the evidence of P.W.3, who has also narrated the incident. P.W.3 fled away from the scene of occurrence because of fear. Shortly after the occurrence, P.W.4, auto driver, who came that way, took P.W.1 to the hospital and admitted him. P.W.14 Doctor, on seeing the serious condition of P.W.1, informed the same to the judicial Magistrate-II, Erode, who rushed over there and recorded the Dying Declaration of P.W.1 in the presence of P.W.14 Doctor and the same has also been produced before the Court. All the injuries found on P.W.1 has been clearly narrated in Ex.P.15 Accident Register. At the earliest point, P.W.1 has made a statement to P.W.14, which has also been recorded therein. Thereafter, on intimation, P.W.15 came to the hospital and recorded the statement of P.W.1. During that time, P.W.1 was very conscious. A reading of Ex.P.1 statement, on the strength on which a case was registered by P.W.15, would clearly indicate that all the accused were involved in the crime. Thus, the Doctor's evidence has fully corroborated the ocular evidence. In the instant case, Dying Declaration was also marked by the Judicial Magistrate. Thus, the prosecution, in view of the above evidence, has clearly proved its case beyond all reasonable doubt. The trial court, only on consideration and appreciation of the evidence available, has found the appellants guilty and recorded findings against them, which has got to be affirmed by this Court.

7. This court paid its full attention to the rival submissions made, and made a close scrutiny of the materials available. As seen above, these appellants along with four others stood charged on different counts, wherein

the specific case of the prosecution was that all the accused have constituted into an unlawful assembly with a common intention of committing murder of P.W.1. At the time of occurrence, A1 armed with deadly weapon came to the place nearby P.W.5 cycle shop where P.W.1 was employed at that time. A1 proceeded to the cycle shop, took P.W.1 under threat to some distance where A1 to A7 attacked him with deadly weapons. A careful scrutiny of the evidence of the injured P.W.1 would clearly reveal that he has categorically narrated the entire incident wherein he was attacked by A1 to A4 on different parts of his body with deadly weapons like knife, sword, etc. He has not spoken anything about either the presence of A5 or any overt act that was committed by A5. A perusal of Ex.P.1 report would also clearly reveal that he named A1 to A4 and not A5 to A7. P.W.3's evidence has clearly corroborated the evidence of P.W.1 as to the incident wherein A1 to A4 have attacked P.W.1.

8. P.W.4, who came that way at that time, has taken P.W.1 to the Government Hospital, Erode within half an hour. P.W.14 Doctor has admitted P.W.1 in the hospital and P.W.1 has stated as follows:

"He was stabbed by about 7-8 persons at about 8.15 p.m. today at autostand Karungalpalayam using fj;jp> tPr;rWths;"

The same has also been recorded by him. P.W.14, who medically examined P.w.1 has given Ex.15 wound certificate, wherein the injuries were narrated as follows:

1) A vertical cut injury in the midline 1 cm above the umbilicus 5 cm x 2 cm x abdominal contents protruding out.

2) 3 + x 1 x 1 cm horizontally placed incised wound 4 cm above the left ear over the scalp.

3) Vertically placed 3 x 2 x 1 cm incised wound over back of left shoulder.

4) Obliquely placed incised wound 3 x 1 x 2 cm above right ant. iliac spine.

This part of the medical evidence would clearly support the case of prosecution as to the place, time and the manner in which the injuries were sustained by P.W.1. Since the condition of P.W.1 was so serious, an occasion arose for P.W.14 to inform the same to the Judicial Magistrate to record the Dying Declaration, which was accordingly done. From the evidence of Judicial Magistrate, who recorded the Dying Declaration from P.W.1, it would be quite evident that P.W.1 was conscious despite the said injuries caused on him.

9. On receipt of intimation, P.W.15 proceeded to the hospital, recorded the statement of P.W.1 marked Ex.P.1. As pointed out earlier, even in Ex.P.1, which came into existence shortly, P.W.1 has narrated the entire incident and named A1 to A4. It is true that all the witnesses, examined for the purpose of proving the confessional statement made by the accused and the recovery of M.Os, have turned hostile, and thus, their evidence was not helpful to the prosecution. This Court is of the considered view that though they have turned hostile and the prosecution cannot take their evidence to their advantage, the same would not in any way affect the prosecution case. The evidence of P.W.1 injured coupled with the evidence of P.W.3, eyewitness and fully corroborated by the medical evidence through P.W.14 doctor, this Court is of the considered view that the accused along with others constituted into an unlawful assembly and came to the place of occurrence to attack P.W.1. Taking into consideration the words uttered by them and the attack that was made by the accused on P.W.1, it could be easily deduced that their intention was to cause murder. Under the stated circumstances, the contentions of the appellants' side that even as per the medical evidence except the first

injury, all other injuries were simple and superficial and there is nothing to even infer that they came to that place with an intention to cause murder has got to be thoroughly discountenanced. This court is unable to find any evidence to connect A5 to the crime in question. Under the stated circumstances, the trial court was perfectly correct in finding the appellants/A1 and A4 guilty under Sections 148 and 307 I.P.C.

10. Coming to the question of sentence awarded to A1 and A4, this Court is of the view that the sentence awarded by the trial court under Section 307 I.P.C. to A1 and A4 has got to be reduced to seven years, which would meet the ends of justice. Therefore, Criminal Appeal No.850 of 2002 is partly allowed. Insofar as A5 is concerned, the conviction and sentence imposed on him by the trial court under Sections 148 and 307 r/w 149 I.P.C. are set aside and he is acquitted of all charges levelled against him. The sentence of 10 years under Section 3 07 I.P.C. imposed by the trial court on A1 and A4 is reduced to seven years. In other respect, the conviction and sentence imposed by the trial court on A1 and A4 are confirmed. C.A.No.1199 of 2002 is dismissed with the above modification. The Sessions Judge shall take steps to commit the Accused No.1 to prison, if he is on bail, to undergo the remaining period of sentence. Bail bonds, if any, executed by Accused No.5 shall stand cancelled and the fine amounts, if any paid, shall be refunded to the accused No.5.

Index : Yes
Internet : Yes
vvk

To
1. The Judicial Magistrate-I, Erode
2. The Judicial Magistrate-I, Erode
through The Chief Judicial Magistrate, Erode
3. The Addl. Sessions Judge(Fast Track Court No.i),Erode
4. The Principal Sessions Judge, Erode
5. The Superintendent, Central Prison, Coimbatore
6. The Public Prosecutor, High Court, Madras
7. The Dy. Inspector General of police, Chennai-4
8. Mr.V.Jaya Prakash Narayan,Govt. Advocate(Crl. side)
High Court, Madras
9. The Inspector of Police, Karungalpalayam Police Station
Erode Town.